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KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL v. WONG TON FENG

HIGH COURT MALAYA, SHAH ALAM
WONG KIAN KHEONG J
[CIVIL APPEAL NO: BA-16-17-06-2019]
6 JULY 2020

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LABOUR LAW: *Social security – Claim – Claim for 'survivor's pension' by widow of deceased – Customary marriage not registered under Law Reform (Marriage and Divorce) Act 1976 ('LRA') – Whether wife of 'insured person' is 'dependant' of insured person within s. 2(3) of Employees' Social Security Act 1969 ('ESSA') – Whether appeal involved 'substantial question of law' – Whether registration of non-Muslim marriages under LRA mandatory requirement – Whether reliance under LRA on construction of definition of 'dependant' in s. 2(3) of ESSA misplaced*

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CIVIL PROCEDURE: *Judicial precedent – Stare decisis – Federal Court reversed decision of Court of Appeal – No written grounds provided by Federal Court – Whether decision of Federal Court not binding under doctrine of stare decisis*

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The respondent was married to the late Mr Wong ('deceased') by way of a Chinese customary marriage. The deceased, while working, collapsed and died due to 'non-traumatic subarachnoid haemorrhage', a type of stroke. As the widow of the deceased, the respondent claimed for a 'survivor's pension' from the Social Security Organisation ('SOCSO') under s. 20A(1)(a) of the Employees' Social Security Act 1969 ('ESSA'). The claim was dismissed on the sole ground that the marriage was not registered under the Law Reform (Marriage and Divorce) Act 1976 ('LRA'). The respondent appealed to the Social Security Appellate Board ('SSAB') and the appeal was allowed by SSAB. Hence, the appeal by SOCSO pursuant to s. 91(1) of the ESSA. The issue for the court's determination in this appeal was whether the wife of an 'insured person', as defined in s. 2(11) of the ESSA, is a 'dependant' of the insured person within the meaning of s. 2(3) of the ESSA when their marriage was not registered under the LRA ('sole issue'). In deciding the sole issue, the court considered: (i) whether ss. 5(4), 22(4) and 27 of the LRA had any effect on the interpretation of the term 'dependant' in s. 2(3) of the ESSA; and (ii) from the view point of the *stare decisis* doctrine, what is the effect of a decision of the Federal Court which has reversed the Court of Appeal's judgment but there is no written judgment of the Federal Court. It was submitted for the appellant that SSAB had erroneously relied on the Court of Appeal's ('CA') decision in *Chai Siew Yin v. Leong Wee Shing* ('*Chai Siew Yin*') which had been reversed by the Federal Court ('FC').

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Held (dismissing appeal with costs; upholding SSAB's decision):

(1) This appeal involved 'a substantial question of law' within the meaning of s. 91(2) of the ESSA because: (i) the sole issue was an important question of law regarding whether non-Muslim widows of insured persons are dependants as understood in s. 2(3) of the ESSA when their marriages are not registered under LRA; and/or (ii) there were conflicting High Court decisions regarding the sole issue. (para 14)

(2) A literal interpretation of the definition of 'dependant' in s. 2(3) of the ESSA does not support the requirement of mandatory registration of non-Muslim marriages under ss. 5(4), 22(4) and 27 of the LRA. There is no express requirement in the definition of 'dependant' in s. 2(3) ESSA that the marriage of a 'widow' has to be registered under the LRA. Neither could the requirement of mandatory registration of non-Muslim marriages be necessarily implied from the definition of a 'dependant' in s. 2(3) of the ESSA. Further, the meaning of a 'dependant' in s. 2(3) of the ESSA does not distinguish between a Muslim widow and non-Muslim widow. As such, the mandatory registration of non-Muslim marriages could not be required for a widow of an insured person in the definition of a 'dependant' in s. 2(3) of the ESSA. (para 15)

(3) Parliament has amended the definition of 'dependant' in s. 2(3) of the ESSA *vide* Act A450, Act A675, Act A814 and Act A1232 and there is a rebuttable statutory presumption that the Legislature is deemed to know the existing law when the amendments were passed. If Parliament had intended to insert a mandatory registration for non-Muslim marriages in the definition of 'dependant' in s. 2(3) of the ESSA, Parliament would have expressly done so by way of any one of the amendments. However, Parliament did not do so. Additionally, the ESSA is a social piece of legislation with the purpose of providing 'social security in certain contingencies'. A purposive interpretation of the definition of 'dependant' in s. 2(3) of the ESSA does not require the imposition of a mandatory registration of non-Muslim marriages. (paras 16 & 17)

(4) SOCSO's reliance on ss. 5(4), 22(4) and 27 of the LRA was misplaced as the LRA is only concerned with: (i) the requirement of monogamous non-Muslim marriages; (ii) the solemnisation of non-Muslim marriages; (iii) the mandatory registration of non-Muslim marriages; and (iv) the amendments and consolidation of the law relating to divorce among non-Muslims. There is no provision in the LRA regarding social security. Hence, the LRA does not concern with social security. Thus, the cases decided regarding the LRA were not applicable in the construction of the definition of 'dependent' in s. 2(3) of the ESSA. (paras 19 & 20)

(5) In view of the FC's decision in *Chai Siew Yin*, the CA's judgment was not a binding precedent. However, there was no written judgment delivered by the FC. 'Without a written judgment of a previous case, the court cannot ascertain the *ratio decidendi* of the previous case by considering the following three matters: (1) the material facts of the case which give rise to the issue to be decided by the court; (2) the rule of law which has been applied by the court to resolve the issue; and (3) the reasoning of the court in applying the rule of law to decide the issue in question' (*Syahin Hafiy Danial Soh Ahmad Luptepi Amin v. Mansur Yunus & Anor*). Hence, when a court delivers a decision but there is no written grounds regarding the decision, the decision is not a binding precedent under the *stare decisis* doctrine. (paras 23 & 24)

Case(s) referred to:

Chai Siew Yin v. Leong Wee Shing [2004] 1 CLJ 752 CA ***(not foll)***

Joremi Kimin & Anor v. Tan Sai Hong [2001] 1 CLJ 526 CA ***(dist)***

Ketua Pengarah Pertubuhan Keselamatan Sosial v. Lam Kun Tai [2019] 10 CLJ 378 HC ***(refd)***

Koi Lean Hua v. Ketua Pengarah Pertubuhan Keselamatan Sosial [2011] 1 LNS 878 HC ***(foll)***

Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 3 CLJ 520 CA ***(refd)***

Patrick Ho Chang v. Pertubuhan Keselamatan Sosial [2020] 1 CLJ 284 HC ***(refd)***

Rimmalapudi Subba Rao v. Noony Veeraju AIR 1951 Mad 969 ***(refd)***

Sundralingam v. Ramanathan Chettiar [1967] 1 LNS 173 FC ***(refd)***

Syahin Hafiy Danial Soh Ahmad Luptepi Amin v. Mansur Yunus & Anor [2019] 1 LNS 1237 HC ***(refd)***

Tan Siew Sen & Ors v. Nick Abu Dusuki Hj Abu Hassan & Anor [2016] 6 CLJ 18 CA ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 7(2)

Employees' Social Security Act 1969, ss. 2(3), (11), 15(g), 20A(1)(a), 91(1), (2)

Law Reform (Marriage and Divorce) Act 1976, ss. 5(4), 22(4), 27

The Constitution of India 1949 [Ind], art. 133(1)

Other source(s) referred to:

Mr Balwant Singh Sidhu, *Married or not Married? - That is the question*, [2002] 3 MLJ cxxix

For the appellant - Diba Natalia Ishak; M/s Skrine

For the respondent - In person

Reported by S Barathi

JUDGMENT

Wong Kian Kheong J:

Background

[1] On 18 December 2004, the respondent (respondent) was married to the late Mr Wong Thien Teck (deceased) by way of a Chinese customary marriage (marriage).

[2] The marriage was not registered under the Law Reform (Marriage and Divorce) Act 1976 (LRA).

[3] When the deceased was working, he collapsed and died due to "Non-traumatic Subarachnoid Hemorrhage" (a type of stroke).

[4] As a widow of the deceased, the respondent claimed for a "survivor's pension" (claim) from the Social Security Organization (SOCSO) under s. 20A(1)(a) of the Employees' Social Security Act 1969 (ESSA).

[5] SOCSO dismissed the claim on the sole ground that the marriage was not registered under LRA (SOCSO's decision). As such, the respondent appealed to the Social Security Appellate Board (SSAB) against SOCSO's decision (respondent's appeal).

[6] The respondent's appeal was allowed by SSAB (SSAB's decision). This is SOCSO's appeal to the High Court against SSAB's decision pursuant to s. 91(1) ESSA (this appeal).

[7] In this appeal, the respondent acted in person.

Sole Question

[8] This appeal raises the sole issue of whether the wife of an "insured person" (as defined in s. 2(11) ESSA) is a "dependant" of the insured person within the meaning of s. 2(3) ESSA when their marriage is not registered under LRA (sole issue). In deciding the sole issue:

(i) whether ss. 5(4), 22(4) and 27 LRA have any effect on the interpretation of the term "dependant" in s. 2(3) ESSA; and

(ii) from the viewpoint of the stare *decisis doctrine*, what is the effect of a decision of the Federal Court which has reversed the Court of Appeal's judgment but there is no written judgment of the Federal Court?

Relevant Provisions Of ESSA And LRA

[9] I reproduce below the title to ESSA [Title (ESSA)], the definition of "dependant" (s. 2(3) ESSA), ss. 15(g) and 20A(1) ESSA:

> *Title (ESSA) - An Act to provide social security in certain contingencies and to make provision for certain other matters in relation to it.*
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> s 2. *In this Act unless there is anything repugnant in the subject or context*:

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s 2(3) - *dependant means any of the following relatives of a deceased insured person, namely*:

(a) *a widow* or widower or a child; and

B (b) *if there is no widow* or widower or child:

(i) a daughter, if married and a minor, or if widowed and a minor;

(ii) an unmarried minor brother or sister or a widowed minor sister;

C (iii) a widowed daughter-in-law;

(iv) a minor child of a pre-deceased son;

(v) a minor child of a pre-deceased daughter where no father of the child is alive;

D (vi) a parent; or

(vii) a grandparent if no parent of the insured person is alive;

Benefits

s 15 Subject to this Act, *the insured persons, their dependants* or the persons E hereinafter mentioned, as the case may be, *shall be entitled to the following benefits*, namely:

…

(g) *periodical payments to dependants* of an insured person who dies while in receipt of invalidity pension, or *of an insured person who has not attained sixty years of age but has completed a full or reduced qualifying period for survivors' pension mentioned in subsections 17A(2) and (3) (hereinafter referred to as survivors' pension).* F

Survivors' pension

G s 20A(1) *If an insured person* who is in receipt of invalidity pension, or if an insured person *who has not attained sixty years of age but has completed a full or reduced qualifying period as specified under section 17A, dies, survivors' pension at the rates specified in the Eighth Schedule shall be payable*:

(a) *to the widow* or the widower during life, and if there are two or more widows, the widow's share of survivors' pension specified in the H Eighth Schedule shall be divided equally between the widows:

Provided that if a widow or widower is entitled to more than one survivors' pension, she or he shall be paid only one pension, being the pension with the higher rate.

I (b) to each child until marriage or until he attains the age of twenty-one years, whichever occurs earlier:

Provided that in the case of a child referred to in paragraph (b) of the definition of child in section 2, survivors' pension shall continue to be paid so long as he is incapable of supporting himself:

And provided further that the Organization may continue such pension to a child who is in receipt of education in any institution of higher learning but not beyond the first degree until he completes or ceases to receive such education or until he marries, whichever occurs earlier.

(emphasis added)

[10] The title to LRA [title (LRA)], ss. 5, 22(4) and 27 LRA state as follows:

Title (LRA) - An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

Disability to contract marriages otherwise than under this Act

s. 5(1) *Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable, during the continuance of such marriage or marriages, of contracting a valid marriage under any law, religion, custom or usage with any other person, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia*.

(2) *Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses and who subsequently ceases to be married to such spouse or all such spouses, shall, if he thereafter marries again, be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the second mentioned marriage or purported third mentioned marriage is contracted within Malaysia or outside Malaysia*.

(3) *Every person who on the appointed date is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia*.

(4) After the appointed date, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III.

Solemnisation of marriages

s. 22(1) *Every marriage under this Act shall be solemnized*:

(a) in the office of a Registrar with open doors within the hours of six in the morning and seven in the evening;

(b) in such place other than in the office of a Registrar at such time as may be authorised by a valid licence issued under subsection 21(3); or

A (c) in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

…

B (4) *Every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be.*

Registration

C s. 27 *The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act*.

(emphasis added)

D **SOCSO's Submission**

[11] In support of this appeal, Cik Diba Natalia binti Ishak (SOCSO's learned counsel) has advanced the following contentions:

(i) in the High Court case of *Koi Lean Hua v. Ketua Pengarah Pertubuhan Keselamatan Sosial* [2011] 1 LNS 878, Hadhariah Syed Ismail JC (as she then was) has decided that a widow is not a "dependant" within the meaning of s. 2(3) ESSA if her marriage is not registered under LRA;

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(ii) sections 5(4), 22(4) and 27 LRA mandatorily require all non-Muslim marriages to be registered under LRA [Mandatory Registration (Non-Muslim Marriages)];

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(iii) as the marriage was not registered under LRA, the respondent was not a "lawful widow" of the deceased and consequently, the respondent was not the deceased's "dependant" as understood in s. 2(3) ESSA;

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(iv) the SSAB has erroneously relied on the Court of Appeal decisions in *Joremi Kimin & Anor v. Tan Sai Hong* [2001] 1 CLJ 526; [2001] 1 MLJ 268 and *Chai Siew Yin v. Leong Wee Shing* [2004] 1 CLJ 752 without taking into account that:

(a) the Court of Appeal's decision in *Chai Siew Yin* has been reversed by the Federal Court [*Chai Siew Yin* (FC's decision)]; and

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(b) *Chai Siew Yin* (FC's decision) has been applied by the Court of Appeal in *Tan Siew Sen & Ors v. Nick Abu Dusuki Hj Abu Hassan & Anor* [2016] 6 CLJ 18; [2016] MLJU 215; and

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(v) Cik Diba has relied on an article written by Mr Balwant Singh Sidhu, "*Married or not Married? - That is the question*", [2002] 3 MLJ cxxix (Mr Balwant's article) to support her submission regarding the mandatory registration (non-Muslim Marriages).

This Appeal Concerns "Substantial Question Of Law"

[12] Section 91(1) and (2) ESSA provides as follows:

Appeal.

91(1) *Save as expressly provided in this section, no appeal shall lie from an order of the appellate boards set up by or under this Act.*

91(2) *An appeal shall lie to the High Court from an order of an appellate board set up by or under this Act if it involves a substantial question of law.*

(emphasis added)

[13] In *Patrick Ho Chang v. Pertubuhan Keselamatan Sosial* [2020] 1 CLJ 284; [2019] 7 AMR 468, I have adopted the meaning of the phrase "substantial question of law" in s. 91(2) ESSA as explained by Rajamannar CJ in the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* 1951 AIR 969 Madras, at [3], [8], [9] and [11] (regarding the meaning of the phrase "substantial question of law" in art. 133(1) of the Indian Constitution). It is decided in *Patrick Ho Chang*, at [13(5)], as follows:

[13] *Based on ss 84(5), 91(1) and (2) ESSA, I am of the following view*:

…

(v) *I accept the interpretation of the phrase "substantial question of law" given in Rimmalapudi Subba Rao. There can only be an appeal against a decision of the Appellate Medical Board to the High Court under s. 91(1) and (2) ESSA if an appellant, be it a claimant or the "Organization" [defined in s 2(16) ESSA as the Social Security Organization], can satisfy the High Court that the appeal involves a "substantial question of law" as follows*:

(a) *an important question of law is involved*;

(b) *a difficult question of law arises in the appeal*;

(c) *if the question of law involved is neither important nor difficult, the question is nevertheless a substantial question of law if the question is arguable in the sense that*:

(i) *there is room for reasonable doubt on the question; or*

(ii) *there is a difference of opinion on the question;*

(d) *when a particular set of facts can lead to alternative findings of law, a substantial question of law is involved;*

(e) *where a legal principle or rule to be applied in a case is not well established, there arises a substantial question of law; or*

(f) *if the appeal concerns:*

(i) *conflicting decisions of the High Court; or*

(ii) *conflicting judgments of the Court of Appeal*

on a question of law and there is no judgment of the Federal Court on the question, there is a substantial question of law involved in the appeal.

A *I should add that the above examples of a "substantial question of law" are not exhaustive;*

(emphasis added).

[14] This appeal involves "a substantial question of law" within the meaning of s. 91(2) ESSA because:

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(i) the sole issue is an important question of law regarding whether non-Muslim widows of insured persons are dependants as understood in s. 2(3) ESSA when their marriages are not registered under LRA; and/or

C (ii) there are conflicting High Court decisions regarding the sole issue. *Koi Lean Hua* has decided that a non-Muslim widow of an insured person is only recognised as a "dependant" within the meaning of s. 2(3) ESSA if her marriage is duly registered under LRA. Su Geok Yiam J has decided otherwise in *Ketua Pengarah Pertubuhan Keselamatan Sosial* D *v. Lam Kun Tai* [2019] 10 CLJ 378; [2019] 6 AMR 154.

Whether Definition Of "Dependant" In Section 2(3) ESSA Requires Registration Of Marriage Under LRA

[15] Firstly, a literal interpretation of the definition of "dependant" in E s. 2(3) ESSA does not support the mandatory registration (non-Muslim marriages). This literal construction of the meaning of "dependant" in s. 2(3) ESSA is clear from the following reasons:

(i) there is no express requirement in the definition of "dependant" in s. 2(3) ESSA that the marriage of a "widow" has to be registered under F LRA;

(ii) the mandatory registration (non-Muslim marriages) cannot be necessarily implied from the definition of a "dependant" in s. 2(3) ESSA; and

G (iii) the meaning of a "dependant" in s. 2(3) ESSA does not distinguish between a Muslim widow and non-Muslim widow. As such, the mandatory registration (non-Muslim marriages) cannot be required for a widow of an insured person in the definition of a "dependant" in s. 2(3) ESSA.

H **[16]** Secondly, Parliament has amended the definition of "dependant" in s. 2(3) ESSA as follows:

(i) the Employees' Social Security (Amendment) Act 1979 (Act A450);

(ii) the Employees' Social Security (Amendment) Act 1987 (Act A675);

I (iii) the Employees' Social Security (Amendment) Act 1992 (Act A814); and

(iv) the Employees' Social Security (Amendment) Act 2004 (Act A1232).

There is a rebuttable statutory presumption that the Legislature is deemed to know existing law, namely LRA, when Act A450, Act A675, Act A814 and Act A1232 (four amendments) are passed – please see the judgment of Gopal Sri Ram JCA (as he then was) in the Court of Appeal case of *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 3 CLJ 520; [1995] 1 MLJ 719, at 754. If Parliament had intended to insert the mandatory registration (non-Muslim marriages) in the definition of "dependant" in s. 2(3) ESSA, Parliament would have expressly done so by way of any one of the four amendments. Parliament however did not do so.

[17] Additionally or alternatively, ESSA is a social piece of legislation with the purpose of providing "social security in certain contingencies" – please see the title (ESSA). A purposive interpretation of the definition of "dependant" in s. 2(3) ESSA does not require the imposition of the mandatory registration (non-Muslim marriages).

[18] The literal and purposive interpretation of the meaning of "dependant" in s. 2(3) ESSA as explained in the above paras. 15 to 17, is supported by Su Geok Yiam J's judgment in *Lam Kun Tai*, at [43], [44] and [48], as follows:

> [43] *I am of the view that by reading and interpreting the words used by Parliament in s 2(3) of the ESSA 1969 reproduced earlier, there is no requirement for the respondent to prove that her marriage to the deceased before his demise is a valid marriage solemnised and registered under the LRA.*
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> [44] *This is because s 2(3) of the ESSA 1969 does not refer to a "lawful widow" or a "lawful widower" of a deceased insured person and hence, in my respectful view, there is no justification for the court to insert the word "lawful" in front of the words "widow or widower" in that section. It follows, therefore, that as long as a claimant under the ESSA 1969 can prove that he or she is a widow or widower or a child of a deceased insured person, the claimant is a "dependant" within the meaning of that section.*
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> ...
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> [48] *In my view, since the ESSA 1969 is a piece of social legislation, which was introduced to secure social and economic justice to all the employees insured under the ESSA 1969, the word "widow" in s 2(3) of the ESSA 1969 ought to be interpreted literally and purposively in order to serve justice to the insured person in order to enable his relatives who are specified under the section to obtain the survivors' pension benefit conferred under the ESSA 1969 in the event of his demise.*
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> (emphasis added)

[19] I am of the view that SOCSO's reliance on ss. 5(4), 22(4) and 27 LRA is misplaced. My reasons are as follows:

(i) as stated in the title (LRA), LRA is only concerned with the following matters:

(a) the requirement of monogamous non-Muslim marriages;

(b) the solemnisation of non-Muslim marriages;

(c) the mandatory registration of non-Muslim marriages; and

(d) the amendments and consolidation of the law relating to divorce among non-Muslims; and

(ii) there is no provision in LRA regarding social security. It is therefore clear that LRA does not concern with social security (which is provided by ESSA) - please refer to *Lam Kun Tai,* at [49] to [51] and [55] to [65].

[20] In view of the purpose and scope of LRA as explained in the above para. 19, cases decided regarding LRA are not applicable in the construction of the definition of "dependant" in s. 2(3) ESSA. In a similar vein, Mr Balwant's article does not concern social security matters, let alone the meaning of "dependant" in s. 2(3) ESSA.

[21] It is to be noted that *Joremi bin Kimin* and *Tan Siew Sen* are cases on dependency claims under s. 7(2) of the Civil Law Act 1956 and do not concern social security - please see *Lam Kun Tai*, at [66] to [70].

[22] Regarding *Koi Lean Hua*:

(i) Su Giok Yam J has declined to follow *Koi Lean Hua* in *Lam Kun Tai*, at [71]; and

(ii) premised on the reasons elaborated in the above paras. 15 to 21, with respect, I follow *Lam Kun Tai* and not *Koi Lean Hu*a. It is trite law that from the viewpoint of the *stare decisis* doctrine, one High Court is not bound by a decision of another High Court – please see the judgment of Ong Hock Thye FJ (as he then was) in the Federal Court case of *Sundralingam v. Ramanathan Chettiar* [1967] 1 LNS 173; [1967] 2 MLJ 211, at 213.

Effect Of *Chai Siew Yin* (FC's Decision)

[23] In view of the *Chai Siew Yin* (FC's decision), the Court of Appeal's judgment in *Chai Siew Yin* is not a binding precedent. Having said that, there is no written judgment regarding *Chai Siew Yin* (FC's decision).

[24] When a court delivers a decision but there is no written judgment regarding the decision, the decision is not a binding precedent under the *stare decisis* doctrine. It is decided in *Syahin Hafiy Danial Soh Ahmad Luptepi Amin v. Mansur Yunus & Anor* [2019] 1 LNS 1237; [2019] MLJU 914, at [13] to [15], as follows:

> [13] In support of This Appeal, the Defendant's learned counsel has referred to the following:
>
> (1) sealed judgments and orders as well as draft judgments and orders of the Court of Appeal, High Court and Sessions Court of other cases (**Other Cases**);
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> (2) written submission filed in the Other Cases; and

(3) memorandum of appeal and notice of appeal filed in the Other Cases.

[14] *I am not able to accept the reference by the Defendant's learned counsel to Other Cases except if written judgments have been delivered in the Other Cases. This is because from the viewpoint of the stare decisis doctrine, only the ratio decidendi ascertained from a written judgment of a superior court, has binding or persuasive effect. I refer to the judgment of Raja Azlan Shah FJ (as his Majesty then was) in the Federal Court case of Malaysia National Insurance Sdn Bhd v. Abdul Aziz bin Mohamed Daud [1979] 2 MLJ 29, at 32 as follows*:

> *However, I would once again emphasise what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict ratio decidendi*.
>
> (emphasis added)

Without a written judgment of a previous case, the court cannot ascertain the ratio decidendi of the previous case by considering the following three matters (3 Matters):

(1) *the material facts of the case which give rise to the issue to be decided by the court;*

(2) *the rule of law which has been applied by the court to resolve the issue; and*

(3) *the reasoning of the court in applying the rule of law to decide the issue in question.*

[15] *In Datuk Haji Harun bin Haji Idris v Public Prosecutor [1977] 2 MLJ 155, the appellant's learned counsel referred to a digest, summary or extract of a previous decision, Heah Chin Kim. Suffian LP held as follows in the Federal Court in Datuk Haji Harun*, at p. 170:

> *The full judgment in Heah Chin Kim [1954] MLJ xxxiii is not available and it is impossible for us to determine its ratio decidendi*.
>
> (emphasis added)

Based on Datuk Haji Harun, no reliance can be placed on a digest, summary or extract of a previous decision because the court cannot extract the ratio decidendi of the previous case by considering the 3 Matters.

(emphasis added).

Outcome Of This Appeal

[25] Premised on the above reasons, SSAB's decision is upheld and this appeal is dismissed with costs.